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Remarks

The only claims now under prosecution are claims 4 – 9 and 18, which relate to the embodiment of the invention that is depicted in Figs. 1 – 8 of the drawing, and claims 11 – 16, 20 and 21, which relate to the embodiment of the invention that is depicted in Figs. 9 – 16 of the drawing.

Claim 4, the broadest of the Figs. 1 – 8 embodiment, which includes a limitation previously found only in claim 17, was otherwise rejected under 35 U.S.C. §103(a) as being unpatentable over Kerr (D. 277,551) in view of Krishnakumar et al. '105 (U.S. 5,472,105) and further in view of Silvers et al. (D. 452,455). Without acquiescing in the propriety of the aforesaid rejection of the as-examined form of claim 4, it is respectfully submitted that claim 4, as amended, together with the claims that depend therefrom, defines patentably under the standards of 35 U.S.C. §103(a) over any proper combination of the teachings of Kerr, Krishnakumar '105, and Silvers et al., alone or in combination with the teachings of any of the other prior art references of record that may properly be combined therewith.

Claim 4 now specifically relates to the construction of a thermoplastic container "that has at least an innermost layer of PET", it also specifically relates to a container for a "large volume of a liquid," specifically a container with a body portion that has a minor lateral extent of at least 4 inches and a major lateral

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extent of at least 5 inches, and with gripping panels that extend into the body portion of the container only partly to a longitudinal centerline of the container from an opposed end of the container that extends perpendicularly to the major lateral extent. This claimed construction cannot be met by combining the teachings of the prior art references, because of the nature of PET in that it, inherently, cannot properly be molded with a change in dimension of the type required to produce opposed gripping panels spaced no more than 2-1/2 in. from one another in a container of such size.\*

Consequently, without limitations as now set forth in claim 4, a large container according to the reconstructed prior art cannot be satisfactorily formed from PET, because PET cannot be blown to the dimensional changes needed to produce spaced gripping panels that are not spaced by a distance greater than 2-1/2 in., which would then be too large to be properly handled by humans of ordinary hand size.

Accordingly, reconsideration and allowance of amended claim 4, together with claims 5 - 9 and 18 that depend therefrom, are respectfully requested.

Claim 11, as examined, was rejected under 35 U.S.C. §103 as being unpatentable over Holmes (D. 308,167) in view of Krishnakumar '105, and

\*The reason for this is that the opposed gripping panels otherwise would not be fully blown in a container with a circular cross-section if the gripping panels were centered along the longitudinal central axis of the container, or the gripping panels would be overstretched and undesirably therefore appear white or pearlescent in an otherwise transparent container.

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further in view of Akiho (U.S. 4,805,788). Without acquiescing in the propriety of the rejection of claim 11, as examined, it is respectfully submitted that claim 11, as amended, defines patentably under 35 U.S.C. §103(a) over any proper combination of the teachings of Holmes, Krishnakumar '105 and Akiho, with or without any proper reference to any of the other prior art references of record.

It is simply not possible, from the teachings of the cited prior art references, to produce a satisfactory large, blown plastic container with a layer of PET with opposed gripping panels that are spaced no more than 2-1/2 in. apart, the maximum distance permitted to provide a container that can be properly handled by a human being. The construction of claim 11 achieves this result, and it does so by the exercise of a level of skill that is beyond the ordinary skill in the pertinent art, as represented by the cited references. Accordingly, reconsideration and allowance of claim 11, together with claims 12 - 16, 19 and 20 that depend therefrom are respectfully requested.

It is respectfully submitted that cases such as In re Rose, 105 USPQ 237 (CCPA 1955) and In Re Tanczyn, 44 CCPA 704, (which was cited for the proposition that "[a] change in size/proportion is generally recognized as being within the level of ordinary skill in the art")(emphasis added), are only sufficient, at best, to support a conclusion that the claimed invention is *prima facie* obvious from the prior art. However, as is clear from In re Rinehart, 531 F.2d.1048, 189

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USPQ 143 (CCPA 1976), it is clear that the concept of *prima facie* obviousness is rebuttable because it is only a legal conclusion and not a fact. *Id.* 189 USPQ at 147. In this case, it is respectfully submitted that the satisfactory [rebuttal] evidence to rebut [of] the *prima facie* obviousness of claims 4 and 11, if proper, which is not conceded, is contained in the specification of Applicant's specification. Specifically, as to the embodiment of claims 4 – 9 and 18, the specification, at page 1, lines 25 – 29, makes it clear that it is not possible for a large container blown from a PET-based material of the type taught by Krishmakumar '105 to achieve spacing between opposed grip panels of substantially less than 3.5 in., which is too great a spacing to permit handling of the container by individuals with small hands. Further, the specification, at page 8, lines 8 – 19, indicates that, as to the container of Figs. 9 – 16, it is possible to obtain a spacing of less than 2-1/2 in. for a container of that type and the prior art, collectively, does not teach that this result is achievable.

Accordingly, it is respectfully submitted that all claims pending in this application are patentable over the prior art references cited thereagainst, with or without any proper reference to any of the other prior art references of record, and reconsideration and allowance of each of such claims, are, therefore, respectfully requested.

It is respectfully submitted that Applicants' has responded in a fully satisfactory manner to all matters at issue in this application, and that this

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application is now in condition for allowance. Reconsideration and allowance of this application at an early date are, therefore, respectfully requested.

Respectfully submitted,



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MARKED-UP VERSION SHOWING CHANGES MADE

4 (Twice Amended, said container

5     #     A container having a body portion with a closed bottom, a neck  
 portion above said body portion, said neck portion tapering inwardly as it  
 extends away from said body portion, and a closure-receiving finish portion,  
 said neck portion being positioned between said body portion and said neck  
 portion, said container being adapted to hold a liquid, being formed in a single  
 piece by molding from a thermoplastic material <sup>large volume of a</sup> and having a body portion  
 10 with a lateral extent of at least 4 in. <sup>that has at least an innermost layer of PP1,</sup> said container further having no opening  
 extending laterally therethrough and having a gripping feature formed by a  
 spaced apart pair of opposed gripping panels that extend into said container  
 in one of said body portion and said neck portion, the space between said  
 gripping panel being no more than 2-1/2 in. ;

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[ 2. A container according to claim 1 wherein:

said body portion of said container has a cross-sectional  
 configuration that is generally that of an oval with a larger, part-circular end  
 and a smaller, part-circular opposed end; [and]

20

said gripping panels extend into said container in said body  
 portion from said opposed end ;

[ 3. A container according to claim 2 wherein:

25     said gripping panels extend into said body portion of said  
 container only partly to a longitudinal centerline of said container ; and

[ 4. A container according to claim 3 wherein:

30     said body portion has a minor lateral extent of at least 4 in., and  
 a major lateral extent <sup>(ML)</sup> of at least 5 in., the major lateral extent extending  
 perpendicularly to said minor lateral extent.

11 (Amended),

<sup>19</sup> (New) A container <sup>finish</sup> that is adapted for packaging a still beverage that is introduced, while hot, into the container and is sealed in the container by applying a closure to the finish portion of the container while the beverage is still hot, said container having a body portion with a closed bottom, a neck portion above said body portion, said neck portion tapering inwardly as it extends away from said body portion, and a closure-receiving finish portion, said neck portion being positioned between said body portion and said <sup>finish</sup> neck portion, said container being adapted to hold a <sup>large volume of a</sup> liquid, being formed in a single piece by molding from a thermoplastic material <sup>that has at least an innermost layer of PET</sup> and having a body portion with a lateral extent (L) of at least 4 in., said container further having no opening extending laterally therethrough and having a gripping feature formed by a spaced apart pair of opposed gripping panels that extend into said container [in one of said body portion and said neck portion], the space (S) between said gripping panel being no more than 2-1/2 in. [said body portion having a circumferentially spaced apart plurality of inwardly projecting panels for partial collapsing to accommodate shrinkage of the packaged beverage as it cools.]

[10. (Amended) A container according to claim 19 wherein:

said body portion is generally circular in cross-section, and said gripping panels extend into said container in said neck portion, and

[11. A container according to claim 10, wherein:  
said body portion has a diameter of at least 4-1/4 in.